

Employee's breach of confidentiality relieves employer of obligation to pay - "Settlements in labour law are sacrosanct" - Arbitrator

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A recent arbitration decision highlights the important role that confidentiality plays in labour dispute settlements. In *Acadia University and the Acadia University Faculty Association (Alleged Breach of Minutes of Settlement – Dr. Rick Mehta)* (May, 2019), Arbitrator Kaplan relieved the employer of its obligation to make a settlement payment following the employee's breach of the confidentiality provisions in the Minutes of Settlement.

By way of brief background, Dr. Rick Mehta, a tenured professor at Acadia University, was terminated for cause in August of 2018. The Acadia University Faculty Association (the "Association") filed grievances contesting the termination. The parties agreed to a mediation which took place on April 1, 2019. The mediation was successful in that the parties agreed to settle the grievances on terms that were set out in Minutes of Settlement (the "Minutes").

Like most settlements of labour disputes, the Minutes included language that stated that neither party made any admission of liability or culpability. A party's ability to maintain its legal position without admitting liability is one of the benefits of such settlement agreements. But, for a party to "keep its powder dry" in this way, it is often necessary to also include strongly worded confidentiality provisions.

The Minutes in question were clear in this respect. They required the parties to "to keep the terms of these Minutes strictly confidential except as required by law or to receive legal or financial advice." The Minutes further stated:

If asked, the parties will indicate that the matters in dispute proceeded to mediation and were resolved, and they will confine their remarks to this statement. Stated somewhat differently, it is an absolute condition of these Minutes that no term of these Minutes will be publicly disclosed.

Arbitrator Kaplan found that almost immediately following the execution of the Minutes, Dr. Mehta breached the non-disclosure provisions. First, Dr. Mehta posted the following on his Twitter page:

"Vindicated former professor! Advocate for free speech and institutional transparency in universities."

One of Dr. Mehta's Twitter followers responded to this post by tweeting:

"congrats Rick! Hope you got a nice sum of monz."

Dr. Mehta responded to this post with:

"All I will say is that I left with a big grin on my face."

On April 12, 2019 Dr. Mehta further tweeted:

"Because I got the vindication I was seeking. In other words, I have left the university on my term, as opposed to the administration's or union's terms. The NDA that I was required to sign by law is not for my protection."

Upon becoming aware of the various tweets, counsel for the Association advised Dr. Mehta to remove his online references to having been vindicated. Dr. Mehta refused to do so. There was a conference call hearing with the Arbitrator on May 1, 2019 which resulted in the following direction:

Professor Mehta is to immediately delete from his Twitter account the reference to him as a "vindicated former professor!" along with the words "I got the vindication I was seeking. In other words, I have left the university on my term as opposed to the administration's or union's terms. The NDA that I was required by law to sign is not for my protection" and he is to refrain from using such terms in the future. Put another way, he is to strictly comply with the Minutes of Settlement about what he can, and cannot say, about the resolution of this matter.

Despite this direction, Dr. Mehta tweeted:

"University administrators are ruthless towards non-leftist profs who exercise their rights to academic freedom and dissent. They also have labour law on their side that allows them to fire tenured profs without cause and to weasel their way out of paying any kind of severance"

and

"You dismissed me for exercising my rights to academic freedom and dissent. Now you are withholding my severance pay..."

In addition to the posts above, Dr. Mehta also sent a letter to the President of Acadia University dated May 8, 2019 threatening to release the Minutes to the media unless certain conditions were met.

Based on the above, Arbitrator Kaplan had very little difficulty concluding that Dr. Mehta breached the Minutes. His decision noted that the terms of the Minutes were carefully and comprehensively

reviewed with Dr. Mehta by Association counsel, counsel for the Canadian Association of University Teachers, and Dr. Mehta's own personal attorney. As a result, "there was no ambiguity in the Minutes themselves, or in the discussion that preceded their signing, about the obligations that followed."

Arbitrator Kaplan went on to state, "*Settlements in labour law are sacrosanct and given the repeated and continuing breaches, together with the absence of any mitigating circumstance or explanation, I find that the University is no longer required to honour the payment provision.*"

In our view

This decision may remind readers of Focus of two arbitration decisions from 2013. In each of *Barrie Police Services Board and Barrie Police Association* (August, 2013) and *Globe and Mail v. CEPUC (Breach of Memorandum of Grievance)* (July, 2013) the employees were ordered to repay settlement amounts after breaching the non-disclosure obligations in their respective settlement agreements (see [Arbitrators impose strict consequences for breach of confidentiality in settlement agreements](#)).

Although such consequences may, at first blush, seem onerous, they have several valid justifications. For example, if settlement payments are publicly disclosed, they may have the effect of setting precedents for, and encouraging other grievances, including non-meritorious ones. The arbitral jurisprudence certainly shows that Arbitrator Kaplan's characterization that labour settlements are "sacrosanct" is not an exaggeration.

For further information please contact [Lynn Harnden](#) at 613-940-2731 and [André Champagne](#) at 613-940-2735.